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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-1078

WARREN J. MOITY,

Petitioner

versus

STATE OF LOUISIANA,

Respondent

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

WILLIAM GUSTE, JR.
Attorney General,
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Rosenbloom v. Metromedia, Inc. 403 U.S. 254, 91 S. Ct. 1811
Thornhill v. Alabama, 310 U.S. 88, 60 S. Ct. 733

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

RESPONSE ON BEHALF OF RESPONDENT, STATE OF LOUISIANA

TO THE HONORABLES, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

May It Please The Court:

STATEMENT OF THE CASE

The petitioner, Warren J. Moity, was convicted in the Fifteenth Judicial District Court of Louisiana, of defamation by publicly stating on September 26, 1971, that one Marion D. Edwards was placed in an insane asylum in Nacogdoches, Texas. Petitioner was sentenced by the District Court to serve ninety-five days in the parish (county) jail and to pay a fine of Two Hundred and Fifty Dollars. This sentence was only reviewable by writs to the Louisiana Supreme Court and these were denied by that court. The petition to this Honorable Court for writ of certiorari to the Supreme Court of Louisiana is presently under consideration.

STATEMENT OF FACTS

Petitioner, Warren J. Moity, a candidate in the Louisiana gubernatorial democratic primary election, purchased time on a local television station and on September 16, 1971 had broadcast a speech in which he stated that one Marion D. Edwards was placed in an insane asylum in Nacogdoches, Texas. Edwards was a private citizen, a real estate and insurance agent and a brother of one of the other candidates in the primary, Edwin W. Edwards (now Governor).

ARGUMENT

The evidence in the case before the district court showed the following:

1. That the statement upon which petitioner was convicted was completely false. Tr. 7 In fact, the petitioner's petition makes no claim to the truthfulness of the statement.
2. That respondent was an anonymous citizen who

earned his living as a real estate and insurance agent. Tr. 2

3. That respondent took no part in the political campaign of his brother for governor except to contribute money to his campaign and talk to friends and solicit their vote for his brother. Tr. 10

4. That the defamatory statement did not involve matters of public or general concern.

5. That petitioner made the defamatory statement with actual malice.

The evidence shows that the petitioner made the defamatory statement with reckless disregard of whether it was true or not. Petitioner stated that he received this information about Edwards being sent to an insane asylum from Dick Davis, Dave Ledford and Marion Edwards. Tr. 44 However, on cross-examination he is very vague as to when Dick Davis gave him this information saying it was during the last congressional campaign and he limits his testimony as to the contents to "if my memory serves me correctly." Tr. 50, 51 Equally vague was his testimony that Ledford furnished this information "on a number of occasions when Mr. Ledford came to my office and on a number of occasions during the last couple of years." Tr. 45 The evidence shows that petitioner made no effort to check the reliability of the alleged information about Edwards. Tr. 52 He did not even inquire whether or not there was a mental institution located in Nacogdoches, Texas. Tr. 52 Moreover, the evidence shows no admission by Marion D. Edwards to petitioner that he had been sent to an insane asylum. Tr. 52, 54

The malice of the petitioner in this case is further reflected in the entire statement made by him during his television appearance on the day of the offense. This statement was introduced and filed in evidence and

forms part of the record sent up from the Fifteenth Judicial District Court to this court. The entire statement shows that petitioner injected matters, accusations and material having no relevancy or materiality whatsoever to the issues of the gubernatorial campaign but were made with the sole apparent purpose of advancing his own interest to the detriment of his opponent Edwin W. Edwards and that of Marion D. Edwards. This statement was a personal attack seeking blemish the good name, reputation and character of both his opponent and an anonymous citizen Marion D. Edwards.

Justice Marshall in his dissent in Rosenbloom v. Metromedia, Inc. supra, stated:

> "The protection of the reputation of such anonymous persons "from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being--a concept at the root of any decent system of ordered liberty."

In Shakespeare's Othello, Act III, Scene III, Othello says:

> "Who steals my purse steals trash; . . .
> But he that filches from me my good name
> Robs me of that which not enriches him
> And makes me poor indeed."

Petitioner's entire statement made on television and filed of record in the 15th Judicial District Court and forwarded to the clerk of this court contains such obviously maliciously prompted statements as:

"Now this same Marion Edwards, the brother of that little "Pill Head" Congressman, Edwin Edwards, is already, he already sold his home in Crowley, Louisiana . . . "Now this is the same old Marion Edwards that came out of this institution. Alright now, this same man who is running up and down the Atchafalaya Beach at the party stripped naked, and I couldn't tell you this if it wasn't true, but I got the picture." .. "Yes, this "Pot Smoking" Marion Edwards, the brother of Edwin Edwards, and old "Pill Head" Edwin Edwards, they're one and the same attempting to mislead you, the voters and taxpayers of the State of Louisiana. And they were at that rock festival naked as a jay bird." . . . "Now is this not the same Edwin Edwards and the same Marion Edwards that's having drunken-drinking parties in Crowley . . " "That is that Marion Edwards and that little "Pill Head" brother of his, Congressman Edwin Edwards" . . . Now, this same man, Edwin "Pill Head" Edwards . . . .

. . . . . .

Why is it that Edwin Edwards' oldest brother won't speak to him? I'm going to give you the answer. They had bad family problems and I'm going to go into that in detail." . . . "Why, as a Congressman and lawyer, does not know it is against the law to transport those young college girls from Lake Charles to Houston, Texas for immoral purposes? And then at the end they are disappointed because they didn't know he liked those boys like that. Now, why

> doesn't Edwin Edwards take his wife when he goes to visit her cousin in Baton Rouge? . . . "I challenge that "tweety bird" that "pill head" to an open debate on television. And though he's got eight million dollars in the mafia and John McKeithen behind him, I'll pay for the time."

Respondent submits that the cases cited by petitioner, to-wit: Garrison v. Louisiana, 379 U.S. 64, 85, S. Ct. 209, New York Times v. Sullivan, 376 U.S. 254, 84 S. Ct. 710, Rosenbloom v. Metromedia, Inc. 403 U.S. 29, 91 S. Ct. 1800, and Thornhill v. Alabama, 310 U.S. 88, 60 S. Ct. 733, have no application here. Common to all of these cases is a statement concerning matters of public or general concern. Such is not the case here. Moreover, unlike Garrison, New York Times and other cases, this is not the case of a public official or public figure.

CONCLUSION

For the reasons stated in the foregoing response, it is urged that petitioner is not entitled to any of the relief sought by him, and, accordingly, the petition for a writ of certiorari should not issue to review the judgment of the Supreme Court of Louisiana.

Respectfully submitted,

WILLIAM J. GUSTE, JR.,
Attorney General
State of Louisiana
Baton Rouge, La.;

CONCLUSION

For the reasons stated in the foregoing response, it is urged that petitioner is not entitled to any of the relief sought by him, and, accordingly, the petition for a writ of certiorari should not issue to review the judgment of the Supreme Court of Louisiana.

Respectfully submitted,

WILLIAM J. GUSTE, JR.,
Attorney General
State of Louisiana
Baton Rouge, Louisiana;

HARRY H. HOWARD,
Assistant Attorney General,
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BERTRAND DE BLANC,
District Attorney
Fifteenth Judicial District,
Lafayette, Louisiana;

T. BARRETT HARRINGTON
Assistant District Attorney,
Crowley, Louisiana,
Attorneys for Respondent

CERTIFICATE

I, Bertrand De Blanc, District Attorney, 15th Judicial District of Louisiana, and attorney for the State of Louisiana, and a member of the bar of the United States Supreme Court, do hereby certify that a copy of the foregoing response for respondent was served on the petitioner through his counsel of record, hereinbelow named, by placing the same in the United States mail, addressed to him at his office with sufficient postage thereon annexed:

Wilbur D. Atkins, Jr., Attorney at Law, 305 West Main Street, Lafayette, Louisiana 70501

BERTRAND DE BLANC